Tenaga Nasional Bhd v Panareno Sdn Bhd (Vital Projects Sdn Bhd, third party and Semantra No-Dig Engineering Sdn Bhd, fourth party)

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO 22NCVC-376–08 OF 2014
AHMAD SHAHRIR J
27 JANUARY 2025

Damages — Quantum — Tort — Defendant damaged plaintiff's underground high-tension cable when carrying out pipe-laying works — Damage necessitated extensive works to replace cable — Whether plaintiff had justified use of superior-quality cable to replace the damaged one — Whether plaintiff's general damages claim was also reasonable and justified

The instant proceedings were for assessment of damages following the High Court's allowing of the plaintiff's claim against the defendant for damaging the plaintiff's underground high-tension cable when the defendant carried out pipe-laying works. The court had also allowed the defendant to claim full indemnity from the third party contractor ('TP') and allowed the TP to similarly claim full indemnity from the fourth party subcontractor who actually carried out the works. The plaintiff claimed RM7,650,621.11 as costs for the reinstatement and replacement of the damaged cable and RM1,912,655.28 as general damages for the defendant's negligence, willful neglect and breach of duty. The defendant submitted that as the plaintiff had used higher-grade XLPE cable to replace the one that was damaged, its claim should be limited to RM1,821,847.93.

Held, allowing the damages claimed by the plaintiff:

(1) On balance of probabilities, the plaintiff had proven its claims for RM7,650,621.11 as compensation for the replacement costs of the damaged cable and RM1,912,655.28 as general damages (see para 8).

(2) The court found that the plaintiff's decision to replace the damaged cable with XLPE cables was reasonable and justified since the XLPE cables were technologically superior, more economical to maintain and were environmentally friendly. The evidence adduced by the defendant through its expert, D1, as to an alternative repair proposal which the plaintiff could have adopted had many deficiencies and was not feasible or reasonable. The plaintiff's evidence was more credible and consistent as it adequately addressed the technical and practical constraints at the

site. The plaintiff's chosen method was the most appropriate and justified course of action in the circumstances (see paras 35–36, 39 & 45–46).

(3) The RM7,650,621.11 cable replacement costs assessed by the plaintiff under Mainhead A was a significant discount from the RM13,110,749.80 it actually incurred under Mainhead C. The plaintiff's reliance on the lower estimate demonstrated a reasonable effort to quantify damages based on the minimum cost of reinstatement whilst acknowledging the benefits derived from the improved specifications of the replacement cable. This method avoided overcompensation and was aligned with the principles of fairness and proportionality in the assessment of damages. It ensured that the plaintiff was fairly compensated without gaining an undue advantage from the upgrades. The plaintiff had acted prudently in selecting a solution that ensured the functionality and reliability of the cable whilst mitigating its losses as far as was reasonably possible (see paras 52–53, 55 & 61).

(4) The defendant's argument that damages should be capped at RM1,821,847.93 based on a pro-rated calculation of actual costs according to the length of the cable was an oversimplification of the assessment of damages and failed to account for the realities of the situation. The defendant's proposed method did not adequately reflect the actual costs incurred and the technical constraints faced by the plaintiff. The proposal disregarded several key factors and did not provide a fair basis for assessing the damages (see paras 56 & 58).

(5) The general damages award sought to compensate the plaintiff for the administrative burden and operational disruption caused by the damage to the cable. Significant additional workload was imposed on the plaintiff's staff during the repair project. They were required to coordinate and manage the extensive replacement works which included technical oversight and compliance with regulatory requirements. The plaintiff had sufficiently demonstrated the impact of these disruptions and the administrative efforts that were required to address them. The awarded sum reflected the need to fairly compensate the plaintiff for these non-quantifiable but substantial burdens which were directly attributable to the defendant's negligence (see paras 59–61).

[Bahasa Malaysia summary

Prosiding semasa adalah bagi taksiran ganti rugi susulan Mahkamah Tinggi membenarkan tuntutan plaintif terhadap defendan berhubung dengan kerosakan terhadap kabel voltan tinggi bawah tanah milik plaintif yang telah disebabkan oleh defendan ketika menjalankan kerja-kerja pemasangan paip. Mahkamah turut membenarkan defendan menuntut gantirugi sepenuhnya daripada kontraktor pihak ketiga ('PK'), dan membenarkan PK untuk turut menuntut gantirugi sepenuhnya daripada subkontraktor pihak keempat yang

A sebenarnya telah melaksanakan kerja-kerja tersebut. Plaintif telah menuntut sejumlah RM7,650,621.11 sebagai kos bagi kerja-kerja pemulihan dan penggantian kabel yang rosak, serta RM1,912,655.28 sebagai ganti rugi am atas kecuaian, pengabaian sengaja dan pelanggaran tanggungjawab oleh defendan. Defendan telah berhujah bahawa oleh kerana plaintif telah B menggunakan kabel jenis XLPE yang lebih bermutu tinggi untuk menggantikan kabel yang rosak, maka tuntutannya hendaklah dihadkan kepada RM1,821,847.93 sahaja.

Diputuskan, membenarkan tuntutan ganti rugi yang dituntut oleh plaintif:

C

(1) Atas imbangan kebarangkalian, plaintif telah membuktikan tuntutannya bagi sejumlah RM7,650,621.11 sebagai ganti rugi bagi kos penggantian kabel yang rosak, dan RM1,912,655.28 sebagai ganti rugi am (lihat perenggan 8).

D

(2) Mahkamah mendapati bahawa keputusan plaintif untuk menggantikan kabel yang rosak dengan kabel XLPE adalah munasabah dan berasas, memandangkan kabel XLPE adalah lebih canggih dari segi teknologi, lebih menjimatkan dari segi penyelenggaraan, serta mesra alam sekitar. Keterangan yang dikemukakan oleh defendan melalui pakarnya, D1, E berhubung dengan cadangan kaedah pembaikan alternatif yang kononnya boleh digunakan oleh plaintif, mengandungi banyak kelemahan dan tidak praktikal atau munasabah. Keterangan plaintif adalah lebih boleh dipercayai dan konsisten, kerana ia menangani dengan secukupnya kekangan teknikal dan praktikal di tapak kerja. Oleh itu, F kaedah yang dipilih oleh plaintif adalah yang paling sesuai dan wajar dalam keadaan tersebut (lihat perenggan 35–36, 39 & 45–46).

(3) Kos penggantian kabel sebanyak RM7,650,621.11 yang ditaksir oleh plaintif di bawah Mainhead A merupakan diskaun yang ketara daripada G jumlah sebenar RM13,110,749.80 yang telah ditanggung di bawah Mainhead C. Kebergantungan plaintif kepada anggaran lebih rendah tersebut menunjukkan usaha yang munasabah untuk menilai ganti rugi berdasarkan kos minimum pemulihan, sambil mengambil kira manfaat daripada spesifikasi kabel gantian yang lebih baik. Kaedah ini H mengelakkan pampasan berlebihan dan selaras dengan prinsip keadilan serta kesamarataan dalam penaksiran ganti rugi. Ia memastikan plaintif diberi pampasan yang adil tanpa memperoleh kelebihan yang tidak sepatutnya hasil daripada peningkatan spesifikasi kabel. Plaintif telah bertindak dengan berhemah dalam memilih penyelesaian yang I menjamin fungsi dan kebolehpercayaan kabel, di samping mengurangkan kerugian sejauh yang munasabah boleh dilakukan (lihat perenggan 52–53, 55 & 61).

(4) Hujahan defendan bahawa ganti rugi hendaklah dihadkan kepada RM1,821,847.93 berdasarkan pengiraan prorata kos sebenar mengikut

panjang kabel, adalah satu penyederhanaan melampau terhadap proses penilaian ganti rugi dan gagal mengambil kira realiti sebenar keadaan tersebut. Kaedah yang dicadangkan oleh defendan tidak menggambarkan dengan tepat kos sebenar yang telah ditanggung dan kekangan teknikal yang dihadapi oleh plaintif. Cadangan tersebut mengabaikan beberapa faktor utama dan tidak menyediakan asas yang adil untuk penilaian ganti rugi (lihat perenggan 56 & 58).

(5) Award ganti rugi am bertujuan memberi pampasan kepada plaintif bagi beban pentadbiran dan gangguan operasi yang disebabkan oleh kerosakan kabel tersebut. Terdapat peningkatan beban kerja yang ketara terhadap kakitangan plaintif sepanjang projek pembaikan dijalankan. Mereka telah dikehendaki menyelaras dan mengurus kerja-kerja penggantian yang meluas, termasuk pengawasan teknikal serta pematuhan kepada keperluan pengawalseliaan. Plaintif telah menunjukkan dengan mencukupi kesan gangguan tersebut serta usaha pentadbiran yang diperlukan untuk menanganinya. Jumlah yang dianugerahkan mencerminkan keperluan untuk memberi pampasan yang adil kepada plaintif atas beban bukan kewangan tetapi nyata dan besar yang berpunca secara langsung daripada kecuaian defendan (lihat perenggan 59–61).

Cases referred to

Cheong Fatt Tze Mansion Sdn Bhd v Hotel Continental Sdn Bhd (Hong Hing Thai Enterprise Sdn Bhd, third party) [2011] 4 MLJ 354; [2010] 19 MLRH 23; [2010] 1 LNS 980, HC (refd)

Chong Nge Wei & Ors v Kemajuan Masteron Sdn Bhd [2022] 3 MLJ 135; [2022] 4 CLJ 833; [2022] 4 MLRA 296; [2022] 4 AMR 674, FC (folld)

Popular Industries Limited v Eastern Garment Manufacturing Sdn Bhd [1989] 3 MLJ 360; [1989] 2 MLRH 705; [1990] 2 CLJ Rep 635, HC (refd)

Shen & Sons Sdn Bhd v Jutawarna Development Sdn Bhd & Ors [2016] 7 MLJ 183; [2016] 3 MLRH 479; [2015] 8 CLJ 125, HC (refd)

Tenaga Nasional Bhd v Ichi-Ban Plastic (M) Sdn Bhd and other appeals [2018] 3 MLJ 141; [2018] 3 MLRA 1; [2018] 3 CLJ 557; [2018] 3 AMR 121, FC (refd)

Balvinder Singh Kenth (with Rishipal Singh a/l Ambar Singh) (Kenth Partnership) for the plaintiff.

Nigel William Kraal (Cheang & Ariff) for the defendant.

Rajendra a/l Navaratham (with Sandhya a/p Saravanan) (Azman Davidson & Co) for the third party.

Low Eu Thuan (Cheong Wai Meng & Van Buerle) for the fourth party.

Ahmad Shahrir J:

INTRODUCTION

[1] This is an assessment of damages arising from the decision of the High Court on liability. The High Court held the defendant liable for negligence and breach of the duty of care owed to the plaintiff. The High Court also upheld the defendant's claim for full indemnity against the third party. The third party was the contractor responsible for the pipe works that led to the damage. Similarly, the High Court allowed the third party's claim for full indemnity against the fourth party. The fourth party, as the sub-contractor, directly carried out the pipe jacking works that caused the damage to the cable.

[2] The liability was in relation to damage caused to the plaintiff's underground 132kV oil-filled cable situated between Joint Bay 5 ('JB5') and Joint Bay 6 ('JB6') along the route from the transmission main intake called the 'Pencawang Masuk Utama' ('PMU') Damansara Heights to PMU Brickfields ('cable').

[3] In September 2021, the Court of Appeal dismissed the appeals filed by the defendant, the third party and fourth party. However, the Court of Appeal varied the interest period directing that interest should run from the date of the High Court judgment.

[4] Subsequently, the defendant filed an application for leave to appeal to the Federal Court. This application was dismissed in March 2022. The dismissal marked the conclusion of appellate proceedings affirming the decisions of the High Court and the Court of Appeal.

[5] This assessment was in relation to the determination of the quantum of damages to compensate the plaintiff for costs incurred in restoring or replacing the damaged cable. The plaintiff claimed damages under two distinct heads. Firstly, the plaintiff sought damages for the reinstatement and replacement of the cable. The plaintiff quantified this claim at RM7,650,621.11 relying on costs categorised under 'Mainhead A'. Secondly, the plaintiff claimed general damages. These damages are sought for negligence, wilful neglect and breach of duty. The plaintiff quantified this claim at RM1,912,655.28.

[6] The defendant contended that the damaged section of the cable, located between JB5 and JB6, measured only 450meters in length. However, it was replaced with a new 4,500meter route utilising upgraded cross-linked polyethylene ('XLPE') cables with a 50% higher capacity. Based on this, the defendant argued that the plaintiff's claim should be proportionately reduced to account for the betterment obtained from the replacement.

[7] The defendant further submitted that the plaintiff had failed to substantiate its claim for damages with sufficient evidence. The defendant contended that the plaintiff was entitled only to nominal damages. Alternatively, the defendant argued that the damages should be limited to RM1,821,847.93 as calculated by their expert on a pro-rated basis reflecting the length and capacity of the original cable.

[8] On assessment of the evidence and considering the submissions of the learned counsel for each party, I found that the plaintiff has established its claim for damages on a balance of probabilities. The plaintiff is entitled to compensation for the replacement costs of the cable in the sum of RM7,650,621.11. Additionally, the plaintiff is entitled to general damages amounting to RM1,912,655.28. These findings are based on the reasons set out below.

BRIEF BACKGROUND FACTS

[9] In 1986, the plaintiff installed a 132kV underground oil-filled cable ('cable') connecting PMU Damansara Heights to PMU Brickfields. The cable formed a critical part of the plaintiff's infrastructure and was designed to ensure the reliable transmission of electricity.

[10] On 30 June 2010, the defendant's consultant issued a written notice to the plaintiff. In this notice, the consultant informed the plaintiff of the defendant's intention to commence water pipe laying works ('pipe works') near the vicinity of the cable. The pipe works were scheduled to begin on 15 July 2010.

[11] By a letter dated 12 July 2010, the plaintiff informed the defendant's consultant that the pipe works could jeopardise the safety of the cable. The plaintiff expressed concerns that the planned works might cause damage to the cable and its associated infrastructure. In the same letter, the plaintiff directed the defendant to halt all works until the precise location of the cable was identified and properly marked.

[12] Subsequently, a site visit was conducted on 16 August 2010 to inspect the area and assess the potential risks to the cable. Following this visit, the defendant submitted a method statement on 18 August 2010. This document outlined the proposed methodology for carrying out the pipe works including the precautions intended to mitigate any adverse impact on the cable.

[13] On 19 August 2010, the plaintiff responded to the defendant's method statement. In its letter, the plaintiff reiterated its concerns that the pipe works

could compromise the safety of the cable. The plaintiff emphasised the need to take all necessary precautions to prevent damage to the cable.

[14] The plaintiff set out specific conditions that the defendant was required to fulfil before commencing the pipe works. These conditions included maintaining minimum depths to ensure the cable's protection and conducting test holes to accurately determine the cable's location.

[15] On 26 August 2010, the defendant formally acknowledged these conditions by signing the plaintiff's letter.

[16] On 4 December 2010 at approximately 4:49pm, the cable sustained damage between JB5 and JB6 at the location where the pipe works were being carried out by the fourth party. The damage caused significant disruption and necessitated the replacement of the affected section of the cable.

[17] The High Court in its judgment found that the defendant had failed to comply with the conditions outlined in the plaintiff's letter of 19 August 2010. These conditions were intended to ensure the safety of the cable during the execution of the pipe works.

[18] The plaintiff concluded that the damage to the cable was beyond repair and that replacement was necessary to restore its functionality. Following this determination, the plaintiff initiated the replacement works on 17 June 2011.

[19] The replacement involved installing new XLPE cables along the route from PMU Damansara Heights to JB14. These works were extensive and required significant coordination and resources to ensure the integrity and capacity of the new cable. The replacement works were completed on 10 September 2012 incurring a total cost of RM13,110,749.80.

ANALYSIS AND FINDINGS

The burden and standard of proof

[20] The premise for the assessment of damages is the principle that the plaintiff bears the burden of proving its losses on a balance of probabilities. This requires the plaintiff to present credible and sufficient evidence to substantiate the claimed damages. This is trite.

[21] In *Popular Industries Limited v Eastern Garment Manufacturing Sdn Bhd* [1989] 3 MLJ 360; [1989] 2 MLRH 705; [1990] 2 CLJ Rep 635, His Lordship the Honourable Edgar Joseph Jr J emphasised this principle. His Lordship remarked that plaintiffs pursuing claims for damages must prove

their losses with adequate evidence. It is not sufficient for plaintiffs to merely list or provide particulars of their claims without proper substantiation.

[22] The Federal Court in *Tenaga Nasional Bhd v Ichi-Ban Plastic (M) Sdn Bhd and other appeals* [2018] 3 MLJ 141; [2018] 3 MLRA 1; [2018] 3 CLJ 557; [2018] 3 AMR 121 clarified an important principle regarding the quantification of damages. The apex court held that when precise evidence of loss is unavailable, the court must do its best to determine the appropriate amount using reasonable approximation or estimation. This principle ensures that justice is served even in cases where exact figures cannot be established.

[23] Clearly, the law does not require absolute certainty in the quantification of damages. Instead, it recognises that some degree of estimation is inevitable in certain circumstances provided the assessment is fair, reasonable and based on the evidence available. In such situations, the court must balance the interests of both parties while ensuring the plaintiff is fairly compensated for proven losses. This approach is particularly relevant in cases involving complex claims where precise calculations may not be possible.

[24] Having carefully reviewed the evidence, I am satisfied that the plaintiff has successfully discharged its burden of proof on the balance of probabilities. The plaintiff has established the damage sustained by the cable and the necessity for its replacement. This conclusion is supported by the detailed documentation provided and the witnesses' testimony.

[25] Although the replacement works involved a longer route and upgraded specifications, the plaintiff has offered credible and persuasive evidence to justify these decisions. Through its witnesses, the plaintiff explained why the chosen solution was appropriate and necessary to address the damage effectively. Furthermore, the evidence supported the quantum claimed as it was consistent with the scope of the replacement works and the costs incurred.

[26] This court considered whether the plaintiff's actions were reasonable in mitigating its losses and whether the quantum claimed aligned with the principles of fair compensation. In doing so, this court assessed the extent to which the plaintiff's decisions were necessitated by the circumstances and whether the defendant's liability reasonably extended to the full amount claimed.

The scope of assessment

[27] A preliminary issue arose concerning the scope of the assessment of damages. Specifically, the question was whether damages must be confined to

A the 450meter section of the cable between JB5 and JB6 that was physically damaged. This section of the cable was the immediate site of the incident caused by the pipe works.

B **[28]** The defendant argued that para (i) of the High Court's liability judgment imposed a limitation on the assessment of damages. They contended that the judgment effectively restricted the plaintiff's claim to the 450meter section and did not extend to the costs associated with the replacement of the entire cable.

C **[29]** Respectfully, I must disagree with this posit. The relevant paragraph of the High Court's liability judgment merely identified the location of the damage for the purpose of establishing liability. To my mind, it did not impose any limitation on the scope of the assessment of damages.

D **[30]** Paragraphs (ii) and (iii) of the judgment expressly directed for assessment of damages for restoration or replacement of the cable as well as general damages. These paragraphs allowed the court the discretion to determine the appropriate type of replacement cable. There is no language in

E the judgment that confined or restricted the quantum of damages to the 450meter section of the cable that was physically damaged.

[31] In the circumstance, I was persuaded to favour a reading of the High

F Court's liability judgment as permitting a broader assessment of damages consistent with the principle of full compensation. It considered whether the replacement solution adopted by the plaintiff, including the upgraded specifications and longer route, was reasonable and necessary in light of the damage sustained.

G **[32]** This interpretation is aligned with established legal principles particularly the rule that a tortfeasor must take their victim as they find them. This principle was reiterated in *Cheong Fatt Tze Mansion Sdn Bhd v Hotel Continental Sdn Bhd (Hong Hing Thai Enterprise Sdn Bhd, third party)* [2011]

H 4 MLJ 354; [2010] 19 MLRH 23; [2010] 1 LNS 980. A defendant cannot escape liability merely because the plaintiff's circumstances resulted in greater consequential costs especially when the vulnerability of damage has been made known to the defendant and the defendant failed to exercise reasonable skill and care.

I **[33]** In this case, if site constraints make it necessary to adopt a longer replacement route for the cable, the defendant must remain liable for those additional costs. However, the plaintiff must demonstrate that these costs were reasonably incurred and directly attributable to the damage caused.

[34] In this instance, an evaluation was necessary as to whether the longer route and upgraded specifications were a reasonable and proportionate response to the damage sustained. This was aimed at a consideration of whether the plaintiffs decisions were consistent with its duty to mitigate losses and whether the quantum claimed reflected expenses that were both necessary and justified.

Justification for XLPE cable replacement

[35] The plaintiff replaced the damaged oil-filled cable with XLPE cables which offered a 50% higher capacity. The plaintiff, through its witness, Goh Cheah Hoe ('PW3'), provided evidence to justify this decision based on several factors, briefly described as follows:

(a) by 2011, TNB had ceased using oil-filled cables for new installations due to advancements in cable technology. XLPE cables were recognised as the industry standard for reliability and efficiency;

(b) XLPE cables were more economical compared to oil-filled cables. XLPE cables were locally available and could be installed by local contractors reducing costs and logistical challenges. In contrast, oil-filled cables needed to be imported from either South Korea, Japan or certain European countries and their installation required the engagement of the corresponding foreign contractors resulting in significantly higher expenses;

(c) XLPE cables were more environmentally friendly and required less maintenance. Unlike oil-filled cables which were prone to oil leakage and environmental contamination, XLPE cables eliminated such risks and were easier to manage over their operational lifespan; and

(d) the connection between the old JB14 and PMU Brickfields had already been upgraded to XLPE cables. Using XLPE cables for the replacement ensured compatibility and consistency within the network thus avoiding technical challenges associated with integrating oil-filled cables into an upgraded system.

[36] In analysis, a consideration must be balanced to determine whether the adoption of XLPE cables was a reasonable and necessary response to the damage. It was in effect an evaluation of the plaintiff's justification for the replacement, particularly in light of industry practices, economic considerations, environmental concerns and the need for system compatibility.

[37] The defendant argued that the cable was nearing the end of its service life and would have required replacement regardless of the damage. However, PW3 testified that TNB cables including oil-filled cables can remain functional

for up to 40 years if left undisturbed. This lifespan significantly exceeds the 25–35 year period referenced in TNB's annual report which PW3 clarified was solely for accounting depreciation purposes and did not reflect the actual operational life of the cable.

[38] I accepted PW3's evidence as credible and reliable. This testimony was not effectively challenged by the defendant during cross-examination or through rebuttal evidence. This court found that the cable was not at the end of its useful life at the time of the damage and would have continued to function for several more years if not for the incident. This supported the plaintiff's claim that the replacement was necessitated by the damage and not by the cable's natural wear or obsolescence.

[39] I am of the considered view that the decision to upgrade the damaged cable to XLPE cables was both reasonable and justified. The plaintiff provided evidence showing that XLPE cables were technologically superior, more economical, environmentally friendly and consistent with existing upgrades in the network. However, the resulting betterment from the upgrade must be taken into account when assessing the quantum of damages. The assessment must ensure that the plaintiff is fairly compensated without resulting in unjust enrichment.

[40] The Federal Court in *Chong Nge Wei & Ors v Kemajuan Masteron Sdn Bhd* [2022] 3 MLJ 135; [2022] 4 CLJ 833; [2022] 4 MLRA 296; [2022] 4 AMR 674, reaffirmed an important principle relevant to this case. It held that courts may rely on quotations and cost estimates as prima facie evidence of reasonable remedial costs provided such evidence is credible and substantiated. This guidance emphasised the importance of evaluating the plaintiff's claimed costs in light of the supporting documentation, including quotations and invoices, to determine whether they reflected reasonable expenses incurred in mitigating the damage. The consideration of the evidence in this regard sought to ensure that the plaintiff would be compensated for its actual losses while preventing overcompensation.

Analysis of alternative routes

[41] TNB initially considered three potential repair methods for addressing the damage to the cable. These methods were categorised as 'Mainhead A', 'Mainhead B' and 'Mainhead C'. Each method involved different scopes of work, costs and technical considerations.

[42] After evaluating these options, the plaintiff ultimately chose to implement 'Mainhead C'. This method involved a more extensive replacement of the cable and was completed at a total cost of RM13,110,749.80. However,

in seeking damages, the plaintiff has based its claim on the lower estimated cost of 'Mainhead A' which amounted to RM7,650,621.11.

[43] Through the testimony of PW3, the plaintiff demonstrated that the repair method under 'Mainhead A', which proposed reconnecting JB5 to JB6 via a 1,500meter route, was not feasible due to various site constraints. These constraints were detailed as follows:

(a) there was insufficient space near the SPRINT Highway to construct the required 20m x 5m joint bay which was essential for the proposed method;

(b) parallel cable laying along the highway was restricted making it impractical to execute the plan within the existing infrastructure;

(c) the proposed route involved 90-degree crossings of the highway, which exceeded the allowable bending radius for the cable, rendering the route unsuitable for installation;

(d) the plan posed a significant risk of damaging the live Circuit 2 cable during the construction and installation works which would have further jeopardised the electrical network;

(e) it was necessary to move away from the original damage point as the area was contaminated and unsuitable for further cable operations; and

(f) the SPRINT Highway management imposed certain restrictions on installing oil pressure tanks which were required for the maintenance of oil-filled cables under the proposed method.

[44] On the facts and evidence, this court accepted this evidence as credible and unchallenged establishing that 'Mainhead A' was not a viable solution. This court found the plaintiff's decision to adopt 'Mainhead C' as a practical alternative was reasonable in light of these constraints. The plaintiff acted prudently in mitigating the risks associated with the damaged cable while ensuring compliance with site and regulatory limitations.

[45] The defendant's expert, DW1, proposed an alternative horizontal directional drilling ('HDD') route which was similar to the method outlined in Mainhead A. However, I found DW1's evidence to be less reliable and insufficient to support the feasibility of this alternative. My findings are based on the following reasons:

(a) DW1's analysis was limited to a desktop review and did not involve any actual site inspection. This omission significantly undermined the reliability of his assessment as critical site-specific factors were not considered;

(b) DW1 lacked practical experience with XLPE cables and HDD or pipe-jacking methods. His limited expertise in these areas raised doubts about the technical viability of his proposed solution;

(c) no utility mapping was conducted as part of DW1's analysis to identify potential underground obstacles. This failure to account for existing infrastructure further diminished the credibility of his proposal;

(d) DW1's analysis failed to address the technical constraints identified by PW3 including issues related to space limitations, bending radius, contamination at the damage point and highway restrictions. Ignoring these critical factors rendered the proposal impractical; and

(e) DW1 provided inconsistent evidence regarding the required joint pit sizes. This further compromised the reliability and coherence of his testimony.

[46] This court found the deficiencies in DW1's evidence and conclusion for his alternative proposal as not a feasible or reasonable solution. By analogy, this court found the testimony of PW3 to be more credible and consistent as it adequately addressed the technical and practical constraints of the site. In the sum of it all, this court found that the plaintiff's chosen method based on PW3's recommendations was the most appropriate and justified course of action in the circumstances.

[47] I found PW3's evidence more reliable and persuasive. His direct involvement in overseeing the repair works and his intimate knowledge of the site conditions lent significant weight to his testimony.

[48] PW3 provided a detailed and credible explanation of why Mainhead A was not a viable option for repairing the damaged cable. He carefully addressed the specific site constraints and technical challenges including space limitations, highway restrictions and the risks posed to the live Circuit 2 cable. His testimony was thorough, consistent and supported by objective evidence.

[49] This court lent greater weight to PW3's evidence as it reflected firsthand experience and a clear understanding of the practical difficulties at the site. With respect, this stood in contrast to the theoretical and less substantiated analysis provided by DW1. As a result, this court held the considered view that PW3's testimony justified the plaintiff's decision to reject Mainhead A in favour of a more suitable repair method.

Assessment of quantum

[50] Although Mainhead A was not a feasible option, I accepted the plaintiff's submission that its estimated cost of RM7,650,621.11 served as a

fair basis for assessing damages. This approach struck an appropriate balance between compensating the plaintiff for the loss and accounting for the betterment resulting from the upgraded XLPE cables and the enhanced network.

[51] The plaintiff's reliance on the Mainhead A estimate demonstrated a reasonable effort to quantify damages based on the minimum cost of reinstatement while acknowledging the benefits derived from the improved specifications of the replacement cable. This method avoided overcompensation and was aligned with the principles of fairness and proportionality in the assessment of damages.

[52] This court found that the Mainhead A estimate sufficiently reflected the plaintiff's actual loss and the deduction for betterment was reasonable. This method ensured the plaintiff was fairly compensated without gaining an undue advantage from the upgrades. This approach was consistent with the legal principles governing damages in similar cases.

[53] The RM7,650,621.11 assessed under Mainhead A represented a significant discount from the RM13,110,749.80 actually incurred by the plaintiff under Mainhead C. This reduction appropriately accounted for the betterment obtained by TNB as the replacement involved newer XLPE cables with 50% higher capacity compared to the original cable.

[54] However, the betterment was unavoidable in this case. Mainhead C was the only technically feasible solution due to the site constraints and limitations as identified by PW3. The plaintiff had no practical alternative but to adopt a solution that provided upgraded specifications. This decision was necessitated by the specific challenges posed by the damaged site and was not intended to rake in an undue advantage.

[55] This court considered that the discount applied to reflect betterment was fair and the plaintiff's choice of Mainhead C was reasonable under the circumstances. It was also the finding of this court that the plaintiff acted prudently in selecting a solution that ensured the functionality and reliability of the cable while mitigating its losses as far as reasonably possible.

[56] Respectfully, I must disagree with the defendant's argument that damages should be capped at RM1,821,847.93 based on a pro-rated calculation of actual costs according to the length of the cable. This approach seemed to oversimplify the assessment of damages and failed to account for the realities of the situation.

[57] Costs associated with the replacement of the cable, such as transition

joints and specialised installation requirements, are not directly proportional to the length of the cable. These fixed costs remained significant regardless of the distance involved. Furthermore, the specific location of the damaged section between JB5 and JB6 necessitated the adoption of a longer route irrespective of the capacity upgrade provided by the XLPE cables.

[58] This court found that the defendant's proposed method did not adequately reflect the actual costs incurred and the technical constraints faced by the plaintiff. By comparison, the plaintiffs claim was based on the Mainhead A estimate more accurately represented the costs that were reasonably and necessarily incurred due to the damage. It was apparent in my considered view that the defendant's pro-rated calculation disregarded several key factors and did not provide a fair basis for assessing damages.

[59] For general damages, this court awarded the plaintiff the sum of RM1,912,655.28. This amount represented 25% of the replacement costs and was intended to compensate the plaintiff for the administrative burden and operational disruption caused by the damage to the cable.

[60] The quantum for this award was supported by PW3's testimony which detailed the significant additional workload imposed on TNB staff during the repair project. PW3 explained that staff were required to coordinate and manage the extensive replacement works which included technical oversight and compliance with regulatory requirements. Furthermore, Circuit 2 experienced an increased load during the repair period adding to the operational challenges faced by the plaintiff.

[61] I find that the plaintiff has sufficiently demonstrated the impact of these disruptions and the administrative efforts required to address them. The awarded amount reflects the need to fairly compensate the plaintiff for these non-quantifiable but substantial burdens which are directly attributable to the defendant's negligence.

[62] The defendant contended that there was insufficient evidence to support the claim for administrative costs. However, I found that such costs naturally arose from the management of a complex infrastructure repair project of this scale. Coordinating the replacement of the cable, addressing site constraints and ensuring operational continuity inevitably placed an additional burden on the plaintiff's resources.

[63] I found the 25% rate applied to the replacement costs as reasonable and consistent with industry practice for compensating for administrative and

operational disruptions. This percentage fairly reflected the extent of the additional workload, oversight responsibilities and challenges faced by the plaintiff during the repair process.

[64] The principle that general damages are recoverable for unquantifiable losses of this nature is well established. In *Shen & Sons Sdn Bhd v Jutawarna Development Sdn Bhd & Ors* [2016] 7 MLJ 183; [2016] 3 MLRH 479; [2015] 8 CLJ 125, the court affirmed that such damages may be awarded to compensate for disruptions and burdens that are not easily translated into precise monetary terms. In the circumstances, I found that the plaintiff had justified its claim for administrative costs and the 25% rate was both fair and consistent with past precedent.

CONCLUSION

[65] For the reasons set out above, I assessed damages in favour of the plaintiff as follows:

(a) the sum of RM7,650,621.11 as damages for the replacement of the cable. This amount reflected the reasonable costs associated with reinstatement taking into account the necessary upgrade and unavoidable betterment;

(b) the sum of RM1,912,655.28 as general damages. This award compensated the plaintiff for the administrative burden and operational disruptions arising from the defendant's negligence as detailed in the evidence;

(c) interest at the rate of 5%pa on the total sum of damages. This interest is to run from 9 November 2018, the date of the High Court's liability judgment, until the full settlement; and

(d) RM100,000 as costs of the assessment proceedings to be paid by the defendant to the plaintiff subject to allocatur.

[66] For completeness, as pronounced in the liability judgment the defendant shall be entitled to the benefit of its judgment for indemnity against the third party. This entitlement ensured that the third party bears the liability to indemnify the defendant for the damages awarded to the plaintiff.

[67] In turn, the third party shall have the benefit of its judgment for indemnity against the fourth party. This judgment required the fourth party to indemnify the third party for the corresponding liability.

[68] This cascading indemnity structure ensures that liability is ultimately borne by the party responsible for the underlying acts or omissions.

Damages claimed by the plaintiff allowed.

Reported by Ashok Kumar